

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MAURICE THOMAS

Petitioner,

v.

MATTHEW MARSKE,

Respondent.

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OPINION AND ORDER

21-cv -821-wmc

Petitioner Maurice Thomas, a federal prisoner incarcerated at the Federal Correctional Institution in Oxford, Wisconsin, seeks post-conviction relief under 28 U.S.C. § 2241. The court directed a response to Thomas’s petition challenging the Bureau of Prison’s (“BOP”) calculation of his sentence credit for time served before sentencing. Respondent asks that the court dismiss this petition because Thomas failed to complete the final step of the BOP’s exhaustion procedures by filing an appeal to the BOP’s Office of the General Counsel. Because Thomas has not shown that any of the exceptions to the exhaustion requirement justified his failure to take that final step, the court agrees and will dismiss his petition without prejudice.

BACKGROUND

In March of 2011 Maurice Thomas was arrested in Georgia and extradited to the State of Pennsylvania to face state-court murder charges. On October 4, 2011, Thomas was sentenced in Pennsylvania state court to serve a five-to-ten-year sentence for that charge. That same day, Thomas was placed in the physical custody of federal authorities

under a writ of habeas corpus ad prosequendum to face federal charges arising from the same events giving rise to state-court conviction.

In 2013, Thomas also pleaded guilty to federal charges: two counts of conspiracy to commit robbery interfering with interstate commerce in violation of 18 U.S.C. § 1951(a); and one count of carrying and using a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). *United States v. Thomas*, 2:11-cr-618-CMR, Dkt. 201 (E.D. Pa.). On December 11, 2013, the court sentenced Thomas to a combined 120 months of imprisonment, stating that Thomas should receive credit for time served. *Id.* However, the court did not state whether Thomas's federal sentence should run concurrent with or consecutive to any state court sentence arising from the same events. After his federal sentencing, Thomas was then returned to Pennsylvania authorities to continue serving his state-court sentence. Finally, on March 10, 2016, Thomas was paroled from his state sentence and turned back over to federal authorities, apparently to begin his federal sentence.

Thomas petitioned the BOP to credit 26 months of time—from October 4, 2011, through December 12, 2013—toward his federal sentence. In October 2018 Thomas submitted an informal resolution form asking for federal credit for that time period, representing he was also in federal custody during that time-period under the writ of habeas corpus ad prosequendum. Because Thomas had already addressed that issue with the Designation and Sentence Computation Center (DSCC) in 2014 and again in 2015, and the DSCC concluded that he was not entitled to the presentence credit he was seeking, The BOP denied his request for credit.

Thomas next submitted a “Request for Administrative Remedy,” repeating his request that the BOP credit that 26-month time period based on the federal judge’s statement at sentencing. Thomas received a response from the warden of his institution dated November 19, 2018, also denying that request, along with an explanation that Thomas had received credit towards his state sentence beginning March 7, 2011, and 18 U.S.C. § 3585(b) permits the BOP to award presentence credit for time served in official detention *only* if the time had not been credited against another sentence. Dkt. 11-6, at 4.

Finally, Thomas submitted a “Regional Administrative Remedy Appeal,” which was similarly denied. Specifically, the regional director again concluded that the BOP could not credit the time he served between October of 2011 and December 12, 2013, because it had been applied to his state-court sentence. The regional director further concluded that Thomas was not eligible to have the BOP retroactively designate the time he served in state custody as the place his federal sentence began, which would allow the state and federal sentences to run concurrently, reasoning that Thomas’s state sentence had already been imposed at the time of his federal sentencing, meaning that “the judge was aware of [his] state sentence and was silent at the time of [his] federal sentencing.” Dkt. #11-6, at 8. Thomas did not appeal the decision of the regional director.

Most recently, on March 8, 2023, Thomas was resentenced in the Eastern District of Pennsylvania because his sentence under § 924(c) had been vacated. Thomas is currently incarcerated at FCI-Oxford, with a release date of December of 2024.

## OPINION

Respondent seeks dismissal because Thomas failed to complete the BOP's exhaustion procedures. Exhaustion of administrative remedies is a prerequisite to seeking habeas relief in federal court under 28 U.S.C. § 2241. *Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004). The exhaustion requirement "allow[s] agencies to develop the facts, to apply the law in which they are peculiarly expert, and to correct their own errors." *Sanchez v. Miller*, 792 F.2d 694, 698 (7th Cir. 1986) (citation omitted). Nevertheless, a district court *may* excuse a failure to exhaust where: (1) requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an indefinite timeframe for administrative action; (2) the agency lacks the ability or competence to resolve the issue or grant the relief requested; (3) appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or (4) where substantial constitutional questions are raised. *Gonzalez v. Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004).

Thomas has not responded to this defense, much less shown that he completed the exhaustion procedures or is entitled to be excused from that requirement. Thus, the court can find no reason to excuse his failure to appeal to the Office of the General Counsel either. Nothing suggests that the BOP has unreasonably delayed Thomas's request for sentence credit. When he filed this petition in 2021, Thomas's anticipated projected release date was December 2024. In August of 2019, when Thomas was actively pursuing his administratively remedies, Thomas had sufficient time to appeal to the General

Counsel. Although at this point time appears to be of the essence, Thomas has not shown that his appeal would have been unreasonably delayed by any fault of the BOP.

Nor has Thomas shown that the BOP is incapable of resolving Thomas's request for 26 months of sentence credit or that exhaustion would be futile because of bias by the BOP. The warden's and regional director's decisions against him are not evidence that the BOP has predetermined the outcome of his appeal to the General Counsel. *See Wunder v. Holinka*, No. 09-cv-591-bbc, 2009 WL 3816972, at \*1 (W.D. Wis. Nov. 13, 2009) (fact that warden denied petitioner's request did not show that administrative process was useless).

Regardless, a belief that the final step in the administrative process would not succeed is not an excuse to not take that step. *See Perez v. Wis. Dep't of Corr.*, 182 F.3d 532, 536 (7th Cir. 1999) ("No one can *know* whether administrative requests will be futile; the only way to find out is to try.") And finally, Thomas's sentence credit request did not raise substantial constitutional questions. Therefore, seeing no basis to excuse Thomas's failure to complete the exhaustion procedures within the BOP, the court is denying this petition without prejudice to renewal once he completes the final step.

## ORDER

IT IS ORDERED that:

1. Maurice Thomas's petition under 28 U.S.C. § 2241 is DENIED without prejudice.

2. The clerk of court is directed to enter judgment and close this case.

Entered this 30th day of October, 2023.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge